SUBCOMMITTEE ON GENERAL FARM COMMODITIES AND
RISK MANAGEMENT COMMITTEE ON AGRICULTURE

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Mr. Chairman and Members of the Subcommittee, I am pleased to testify today. My name is Jeffrey C. Sprecher and I am the founder, Chief Executive Officer and Chairman of IntercontinentalExchange, Inc. (ICE). ICE operates the leading global electronic over-the-counter, or OTC, marketplace for trading energy commodities and derivative contracts based on energy commodities. ICE's leading Internet-based electronic platform brings together buyers and sellers of energy commodities and OTC derivative energy contracts. ICE also operates an energy futures exchange through its wholly-owned U.K. subsidiary, the International Petroleum Exchange, or the IPE.

I would like to thank the Committee for its effective and far-sighted work in developing and adopting the Commodity Futures Modernization Act of 2000 (CFMA). Among its many achievements, the CFMA provided for a new category of trading facility, the exempt commercial market, or ECM. This Committee recognized that electronic marketplaces whose participants are limited to eligible commercial entities trading on a principal-to-principal basis do not require the same level of federal oversight as futures exchanges that are accessible by the general public. ICE operates as an ECM today because of the good work of this Committee in adopting the CFMA.

I. ICE OVERVIEW

Headquartered in Atlanta, Georgia, ICE was formed in 2000 pursuant to a no-action letter from the Commodity Futures Trading Commission (CFTC), the terms of which were later that year substantially codified in the CFMA. ICE operates a "many-to-many" electronic platform that allows buyers and sellers of derivative energy contracts and physical commodities to view and act upon each other's bids and offers. ICE's electronic platform automatically matches buyers and sellers posting the best bids and offers according to a neutral “first-in, first out” algorithm, thereby ensuring a level playing field for both the largest and smallest of its market participants. ICE itself is not a party to any of the transactions on its platform and does not participate as a principal in the markets for energy commodities trading in any forum.

ICE’s electronic marketplace is globally accessible, promotes price transparency and offers participants the opportunity to trade a variety of energy products. Its key products include energy derivative contracts for crude oil, natural gas and power. Among other things, its products provide market participants with a means for managing risks associated with changes in the prices of energy commodities, ensuring physical delivery of energy commodities, and the ability to obtain exposure to energy commodities as an asset class. The majority of ICE’s energy contracts are financially settled, meaning that payment is made through cash payments based on the value of the underlying commodity rather than by actual delivery of the commodity itself.

ICE’s electronic platform is designed to enhance the speed and quality of trade execution. In addition, its platform offers a comprehensive suite of trading-related services,

including OTC electronic trade confirmation and access to clearing services. ICE also offers a variety of market data and information services.

ICE operates its OTC business through its globally accessible electronic platform, and offers trading in a wide variety of OTC energy contracts. ICE's customers, representing many of the world's largest energy companies and leading financial institutions, as well as proprietary trading firms, natural gas distribution companies and utilities, rely on its platform for price discovery, hedging and risk management. As of the end of 2004, ICE had over 5,000 screens at over 860 participant trading firms, and on a typical trading day over 3,600 individual screen users are connected to its platform for trading. OTC contracts available for trading on its electronic platform include forwards, options, swaps, differentials and spreads. ICE introduces trading in additional, complimentary products on its electronic platform on a regular basis, leveraging the scalable and flexible nature of its platform. We believe that ICE has enhanced the ability of market participants to access and utilize the energy markets by creating more competition through an innovative trading mechanism and complete transparency of prices and transactions. These factors, in our view, have allowed participants to trade more efficiently and effectively, which also serves the larger public interest.

A. Trade Execution Services

Participants executing trades on the ICE platform can take advantage of a broad range of automated OTC trade execution services, including straight-through trade processing and electronic trade confirmation. Prior to the commencement of trading on ICE, virtually all OTC energy derivatives trading was conducted either directly between two counterparties, or through "voice brokers," which matched buyers and sellers through telephone conversations. These mechanisms, however, are cumbersome and inefficient and do not allow market

participants to find the opposite side of a desired transaction quickly or cheaply. Moreover, pricing in these markets was completely opaque, with no centralized location to capture bids, offers or transaction prices. ICE has transformed these markets by providing OTC market participants with the ability to view bids, offers and transactions on a completely transparent basis and to execute transactions quickly and efficiently by a click on a computer screen.

eConfirm is ICE's electronic trade confirmation system. eConfirm offers market participants an automated, reliable, and low-cost alternative to manual trade verification and confirmation. eConfirm reviews electronic trade data received from individual traders, screens and matches this data electronically, then highlights any discrepancies in a report to the traders' respective back offices. In doing so, it significantly decreases the risk of "confirmation errors" and dramatically reduces the recordkeeping burden on companies by feeding directly into the risk management and recordkeeping systems of companies. eConfirm is available for use by both ICE market participants and OTC market participants who trade through voice brokers or other means.

B. Centralized Clearing Services

ICE's most actively traded and liquid OTC markets include those with contracts that can be traded bilaterally or cleared at the customer's option. In order to provide participants with access to centralized clearing and settlement, ICE launched the industry's first cleared OTC natural gas and oil contracts in March 2002, and introduced the first cleared OTC power contracts in December 2003. In a cleared OTC transaction, our clearing services provider, LCH.Clearnet, acts as the counterparty for each clearing member that is a party to the transaction (with each clearing member in turn acting on behalf of its customer), thereby reducing the credit risk that would otherwise be presented by a traditional principal-to-principal OTC transaction.

Participants who are comfortable with the credit of their counterparty may prefer to trade on a bilateral basis. The introduction of cleared OTC contracts has provided participants with an important alternative to bilateral clearing, by reducing the amount of collateral participants are required to post on each OTC trade, as well as the resources required to enter into multiple negotiated bilateral settlement agreements to enable trading with other counterparties. In addition, the availability of clearing through LCH.Clearnet for both ICE's OTC transactions and futures trades conducted through the IPE enables participants to cross-margin certain of their futures and OTC positions, meaning that a customer's position in its futures and OTC trades can be offset against each other, thereby reducing the total amount of collateral a customer must deposit with LCH.Clearnet.

The availability of clearing services and the attendant improved capital efficiency has attracted new participants to the market for energy commodities trading. The growing number and type of participants trading on ICE's platform has increased liquidity as well as the volume of gas, power and oil contracts traded. There are 23 futures commission merchants (FCMs) clearing transactions for the approximately 1,200 participants active in ICE's cleared OTC markets. As of February 2005, open interest in ICE's cleared OTC contracts was approximately one million contracts in gas, power and oil.

C. Market Data

ICE also serves the market data needs of its participants and the broader marketplace through the 10x Group, ICE's market data subsidiary. Established in 2002 in response to growing demand for objective, transparent and verifiable energy market data, 10x generates market information and indices based solely upon auditable transaction data derived from actual OTC trades executed on ICE's electronic platform and/or confirmed through ICE's

eConfirm. Each trading day, 10x delivers proprietary energy market data directly from ICE's OTC market to the desktops of thousands of market participants. 10x publishes ICE Daily Indices for OTC natural gas and power contracts for 60 of the most active natural gas hubs and 30 of the most active power hubs in North America. 10x was recently recognized by the Federal Energy Regulatory Commission (FERC) as the only publisher of natural gas and power indices to fully comply with all of the gas and power index publishing standards identified in the FERC Policy Statement of Price Indices. 10x transmits the ICE Daily Indices via e-mail to 7,100 energy industry participants each trading day. 10x also provides an End of Day Report which is a comprehensive electronic summary of daily trading activity on ICE's electronic platform. ICE's operations generate an increasingly broad range of market data, which is distributed on a real-time and historical basis.

D. IPE

ICE's wholly-owned subsidiary, the IPE, operates as a Recognized Investment Exchange in the United Kingdom and is the second largest energy futures exchange in the world. All IPE futures and options trades are executed either on the open-outcry exchange floor or on ICE's electronic platform and, in either case, all transactions are cleared by LCH.Clearnet. On March 7, 2005, IPE announced that it will be closing the open-outcry trading floor and transitioning to conducting trading exclusively on ICE's electronic platform. IPE members and their customers include many of the world's largest energy companies and leading financial institutions. IPE offers trading in the IPE Brent Crude futures contract, a benchmark contract relied upon by many large oil producing nations to price their oil production. IPE also trades other futures contracts, including gasoil and other energy products.

II. CFTC OVERSIGHT OF ICE

Pursuant to the terms of the CFMA and regulations adopted by the CFTC to implement the CFMA, ICE operates its OTC electronic platform as an ECM. The CFMA and CFTC regulations require that all ICE participants must qualify as eligible commercial entities, as defined by the CFMA, and that each participant trade for its own account, as a principal. Eligible commercial entities include entities with at least $10 million in assets that incur risks (other than price risks) relating to a particular commodity or have a demonstrable ability to make or take delivery of that commodity, as well as entities that regularly purchase or sell commodities or related contracts and are part of a group with at least $100 million in assets or assets under management. ICE has obtained orders from the CFTC permitting floor brokers and floor traders on U.S. and non-U.S. exchanges to be treated as eligible commercial entities, subject to their meeting certain requirements.

As an ECM, ICE is required to comply with access, reporting and record-keeping requirements of the CFTC. Both the CFTC and the FERC have view only access to ICE's trading screens on a real-time basis. In addition, ICE is required to report to the CFTC transactions in products that are subject to the CFTC's jurisdiction that meet certain volume requirements, and record and report to the CFTC complaints that ICE receives of alleged fraud or manipulative activity on its markets. ICE is also required under CFTC regulations to make available to the public, at no charge, delayed prices for any products on its OTC market that perform a price discovery function. While ICE is not substantively regulated in the same manner as the designated contract markets, it is subject to oversight by the CFTC. In contrast, "voice brokers" and other OTC market participants are not subject to CFTC jurisdiction in any respect.

ICE has worked closely with the CFTC to educate the agency about its functions as an ECM. It has actively responded to CFTC requests for information and has provided input on the public record as the CFTC has developed and revised rules for ECMs. ICE has developed a good working relationship with the CFTC and looks forward to continuing that cooperative relationship.

III. REAUTHORIZATION

We look forward to working with the Committee as it considers the many issues facing the CFTC during the reauthorization process. With respect to issues affecting ECMs in particular, ICE is of the view that the CFMA and the rules adopted by the CFTC provide an effective framework for oversight of these commercial marketplaces and that there is no need to amend the Commodity Exchange Act in this area. While ICE is aware that some have recommended increased regulation of exchange and OTC energy trading, ICE does not believe that additional market restrictions would be in the public interest or would achieve the goals outlined. Price volatility in the energy markets has a number of fundamental sources, such as geopolitical events, production and consumption cycles, supply and demand imbalances, delivery locations, and seasonality. These factors will be present, and will result in periods of price volatility, regardless of the type and level of regulation that is applied to the relevant markets. Accordingly, the goal, in our view, should be to enable market participants to access the tools that will allow them to deal most effectively with price volatility. We believe that open, freely accessible and transparent markets represent the best approach for addressing price volatility, and that Congress is to be commended for recognizing this and advancing these objectives through the creation of "exempt commercial markets" under the CFMA. Restricting

trading activity through additional regulation would only adversely affect market liquidity and price transparency and would not reduce volatility.

We also believe it is important to note that, as explained above, ICE matches buyers and sellers on its electronic platform, through the use of neutral algorithm, but does not itself become a party to any transaction as principal, nor does ICE otherwise trade in the energy markets. ICE's only role is to provide an impartial and independent venue in which market participants can view bids and offers and execute transactions. In contrast to the "one-to-many" platform operated by Enron, ICE's platform is a "many-to-many" system on which participants trade with each other, not with ICE. In fact, ECMs, by definition, are necessarily "many-to-many" facilities and do not present the issues and potential problems posed by platforms such as "Enron Online."

As reflected in ICE's own experiences, market liquidity and transparency that was adversely affected in 2001-2002 as a result of the reduction in trading by many merchant energy companies has now recovered. New market participants, including financial institutions and collective investment vehicles, have added new depth to the markets and have allowed markets to more rapidly achieve price levels determined by fundamental forces of supply and demand. Complaints about high energy prices and high price volatility are not properly directed to the exchange and OTC markets that provide robust opportunities for price discovery and transparency. ICE trusts that this Committee, with its long experience with trading markets, will recognize that there is no benefit in a "shoot-the-messenger" approach to regulation.

On behalf of ICE I would again like to thank this Committee for its excellent work in enacting the CFMA. It has been a clear benefit to our company and, I submit, to producers and users of energy commodities around the world. ICE looks forward to working

with this Committee as it tackles the many issues facing the CFTC during this reauthorization process. I stand ready to answer any questions that the Committee may have about ICE or the energy trading markets.